

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2545 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

FARID AHMED MAQBOOL AHMED PATHAN

Versus

POLICE COMMISSIONER

Appearance:

MR GA PATHAN for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/08/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 28/1/1997 rendered by the respondent no. 1 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been indulging in anti-social activities of assaulting

innocent persons and causing hurt and also indulging in committing offences of robbery and thus creating atmosphere of fear. The detaining authority has placed reliance upon the following offences registered against the petitioner :-

DCB Ahmedabad city U/S 25/1/B.A of the Pending
city CR No.36/94 Arms Act. in Court

Arrested on 24/11/1994 and released on bail on
26/11/1994.

Maninagar Police U/ss.324 read with 114, Pending
Station CR 274/96 327 & 454 of the IPC investi.
r/w. s.135(1) of BP Act.

Arrested on 25/10/96 & released on bail on
28/10/1996.

Maninagar Police 294(b), 323, 457,452, Pending
Station CR 282/96 of the IPC r/w.S.135(1) in Court.

Arrested on 25/10/1996 and released on 28/10/96.

Maninagar Police 392, 506, 144,427 of
Station CR 312/96 the IPC r/w. S.135(1)of -do-
the BP Act.

Arrested on 25/10/1996 and released on 28/11/96.

Maninagar Police 147,148,149,380,452, Pending
Station CR 355/96 506(2) & 114 of the Investi.
IPC r/w. S.135(1) of the
B.P. Act.

Arrested on 24/1/1997 and released on 24/4/1997.

It might be noted that the particulars of dates
of arrest and release on bail have been set out
as per the submissions made on behalf of the
parties.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of 4 witnesses have been relied upon. They speak about two incidents dated 2/1/97 and 6/1/1997 indicating beating of concerned witnesses in public resulting in fear in the mind of people.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a 'dangerous person' within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the impugned order of detention as also the continued detention of the petitioner on number of grounds inter-alia on the ground appearing in ground no. 8-B of the petition, which reads as under :-

"The petitioner says and submits that he has made representation to the State Government and Advisory Board on 12/7/97 but same has not been considered by the State Government within time and his relative also made representation to all the authority, but the same has also not been considered within time. So the order is bad in law and his continued detention has become illegal."

6. The learned advocate for the petitioner has submitted that the delay in consideration of the representation has resulted in violating the provision of Article 22(5) of the Constitution of India. Reference in this connection has been made to a decision of the Apex Court in the case of Aslam Ahmed v. Union of India reported in AIR 1989 SC 1403.

7. In reply, it has been submitted that the representation was received on 16/7/1997 and the same has been decided and communicated on 23/7/1997. No affidavit in reply for explaining delay has been filed. It is thus, clear that avoidable and unexplained delay as above has clearly resulted in rendering the continued detention of the petitioner illegal and constitutionally impermissible.

8. It might also be noted that one co-accused Ahmedkhan Gulamkhan was released from the preventive detention by revoking his order of detention.

9. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision of Aslam Ahmed's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

10. The continued detention of the petitioner under the impugned order is hereby held illegal and the same is quashed and set aside. The petitioner-detenu - Farid Ahmed Maqbool Ahmed Pathan shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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